

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-9445-94

EPFlores

BY REGULAR MAIL AND FACSIMILE

date:

to: Chief, Examination Division, Manhattan District
Attention: Jim Butler

from: District Counsel, Manhattan

subject:

[REDACTED]
Consents to Extend the Statute of Limitations
Statute of Limitations Expires [REDACTED]

UIL NOS. 6501.04-02, 6501.08.17

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This memorandum is our response to your request for advice as to who is the proper party to execute consents to extend the statute of limitations (the "consents" or "Form 872") on behalf of [REDACTED] for the consolidated returns for the taxable years [REDACTED], [REDACTED], and [REDACTED]. Our advice is based on the facts provided by you and that are set forth in this memorandum.

ISSUE:

Who is the proper party to execute consents to extend the statute of limitations (the "consents" or "Form 872") on behalf of [REDACTED] for the consolidated returns for the taxable years [REDACTED], [REDACTED], and [REDACTED]?

FACTS:

You have requested our advice as to who is the proper party to execute consents to extend the statute of limitations for [REDACTED] ("[REDACTED]") for the consolidated returns for the taxable years [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] is a Delaware corporation. During the subject taxable years, [REDACTED] was the common parent, i.e., the highest tier domestic corporation, for the consolidated group.

On [REDACTED], the [REDACTED] ("[REDACTED]"), a Canadian corporation, announced that it had accepted approximately [REDACTED]% of the shares of [REDACTED] (a publicly traded [REDACTED] corporation) tendered pursuant to a tender offer by [REDACTED]. On [REDACTED], [REDACTED] through [REDACTED] (a [REDACTED] corporation in which [REDACTED] indirectly held [REDACTED]%), purchased approximately [REDACTED]% of the stock of [REDACTED] pursuant to this tender offer. [REDACTED] claims that this purchase was a qualified stock purchase within the meaning of § 338(d)(3). [REDACTED] will make a § 338(g) election for [REDACTED] which, if proper, resulted in a deemed transfer, at the close of [REDACTED], by [REDACTED] of all of its assets, including a [REDACTED]% stock interest in [REDACTED]. This § 338(g) election for [REDACTED], if proper, also resulted in a deemed transfer, at the close of [REDACTED] of [REDACTED]% of the stock of [REDACTED], a wholly-owned subsidiary of [REDACTED]. [REDACTED] will also make a § 338(g) election for [REDACTED] which, if proper, resulted in a deemed transfer, at the close of [REDACTED], by [REDACTED] of all of its assets, including the remaining [REDACTED]% stock interest in [REDACTED].

Subsequently, pursuant to a "Stock Purchase Agreement" dated [REDACTED], [REDACTED] transferred [REDACTED] shares of common stock of [REDACTED] to [REDACTED] ("[REDACTED]"), a Delaware corporation owned by [REDACTED] in exchange for a promissory note in the amount of \$ [REDACTED]. Pursuant to a "Stock Purchase Agreement" dated [REDACTED], [REDACTED] (a [REDACTED] corporation) transferred [REDACTED] of common stock of [REDACTED] to [REDACTED] in exchange for a promissory note in the amount of \$ [REDACTED].¹ The shares of common stock referred to above constituted, on [REDACTED], [REDACTED] % of the issued and outstanding stock of [REDACTED]. [REDACTED] has not claimed that its purchase of [REDACTED]'s stock was a qualified stock purchase under I.R.C. §² 338 and [REDACTED] has not elected under § 338 to deem the stock purchase as a transfer of [REDACTED]'s assets to [REDACTED].

Furthermore, you have also informed us that the following statements are accurate: (1) [REDACTED] did not execute any merger and/or liquidation agreements in conjunction with the execution of the stock purchase agreements; (2) As a result of the stock purchase, [REDACTED] was not liquidated; (3) As a result of the stock purchase, [REDACTED] was not merged out of existence; (4) [REDACTED] continues to exist today as the common parent of the consolidated group; (5) As a result of the stock purchase, [REDACTED] did not change its name; (6) As a result of the stock purchase, [REDACTED] did not assume any of the tax liabilities of the consolidated group, [REDACTED] and/or any of the subsidiaries of the consolidated group for the subject taxable years; (7) As a result of the stock purchase, [REDACTED] has not liquidated or otherwise disposed of any of the subsidiaries of [REDACTED]; and (8) As a result of the stock purchase, [REDACTED] has not liquidated or otherwise disposed of any of its subsidiaries.

¹ The transactions in these two agreements will be referred to as the stock purchase.

² All further references to "section" or "§" will be to the Internal Revenue Code in effect during the years in question.

DISCUSSION:

Under § 6501(c)(4), the Service and a taxpayer may consent in writing to an extension of the time for making an assessment if the consent is executed before the expiration of the normal period of assessment or the extension date agreed upon in a prior extension agreement between the parties. In order to extend the period for assessment in the case of a corporate return, a Form 872 must be executed by a duly authorized officer of the proper corporation. Under Treas. Reg. § 1.1502-77, [REDACTED], as the common parent of the consolidated group, is authorized to be the sole agent for each of its subsidiaries in the consolidated group for matters relating to the tax liability for the subject consolidated return years. [REDACTED]'s purchase of only [REDACTED]'s stock does not change our analysis because (1) [REDACTED] was not liquidated or merged out of existence; (2) [REDACTED] has not changed its name; (3) [REDACTED] continues to exist today as the common parent of the consolidated group; and (4) [REDACTED] did not assume any of the tax liabilities of the consolidated group. Therefore, the consents should bear the following caption: "[REDACTED] EIN: _____)".

Under § 6061, any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. In the case of corporate returns, § 6062 provides that a corporation's income tax return shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The regulations under § 6501(c)(4) do not specify who may sign consents executed under this section. Accordingly, the Service will apply the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. Under Treas. Reg. § 1.6062-1, returns that are required to be made by corporations under the provisions of subtitle A or subtitle F of the Internal Revenue Code for any tax imposed by subtitle A shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to sign such returns. Therefore, any such officer of [REDACTED] is authorized to sign the consents.

CONCLUSION:

The subject consents should bear the caption "[REDACTED]
[REDACTED], EIN: _____". Any such officer
of [REDACTED], as described in Treas. Reg. § 1.6062-1, is
authorized to execute the consents for the subject taxable years
for the subject consolidated returns. If you have any questions,
please call Lisa Flores at 212-264-5473 extension 232.

FRANCES F. REGAN
Acting District Counsel

By: _____
THEODORE R. LEIGHTON
Assistant District Counsel

Noted:

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